IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9570 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RP SINHA

Versus

COMMISSIONER

Appearance:

M/S.VYAS ASSOCIATES for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 21/03/2000

ORAL JUDGEMENT

#. Notice as to interim relief was made returnable on 17.12.1999. With the consent of the parties today the matter is taken up for final disposal.

#. Vyas Associates, for the petitioner, Mr.P.G.Desai

for respondent - Municipal Commissioner Surat, Mr.S.N.Shelat for Mr.P.G.Desai.

#. The petitioner is approaching this court by way of this petition with the prayer that the direction may be issued to the respondent to reinstate the petitioner in pursuance to the resolution at Annexure- B, C and D. The facts giving rise to the present controversy are as under:-

#. The petitioner was appointed as Medical Officer in the Respondent Corporation in the Surat Municipal Corporation (hereinafter for short referred as "respondent corporation") in the year 1972. Thereafter, he was promoted as Senior Resident Medical Officer. The petitioner further came to be promoted to the post of Medical Officer of Health (M.O.H.) in the year 1986. The petitioner was given charge of Deputy Commissioner (H & H). The said charge was initially for the six months but thereafter the same was continued upto 31.8.1998. In the year 1998 the post of Deputy Commissioner (H & H) was treated to be reserved for S.T.Candidate and one Dr. I.C.Patel came to be appointed on the said post. The present petitioner being aggrieved of that had filed Spl. C.A. No.6829/98 before this court and the same is pending. It is the case of the petitioner that in the said Spl. C.A. an order was passed directing the respondent therein to maintain status quo qua the service condition of the petitioner and though the said order was served on the respondent therein by fax, the then Municipal Commissioner appointed Dr.I.C.Patel in place of petitioner ignoring the order of this court. This fact are required to be narrated because the petitioner has alleged mala fide against the then Municipal Commissioner and also the present Municipal Commissioner in the present dispute.

#. It is the case of the petitioner that thereafter the then Municipal Commissioner made the proposal to the Standing Committee to put the petitioner under suspension, against which also the petitioner had filed a Spl. C.A. No.7525/98 which is pending for final hearing on board. On 10.9.98 the Standing Committee passed a resolution to put the petitioner under suspension and accordingly the petitioner came to be suspended. Thereafter on 23.2.99 a charge sheet came to be issued to the petitioner and on receipt of the said charge sheet the petitioner asked for certain documents for replying the said charge sheet, but according to the petitioner the same were not supplied even after making 5 to 6 reminders. It is further stated by the petitioner that

on 9.6.99, 16,6,99 and 3.7.99 instead of supplying the documents asked for by the petitioner, the petitioner was issued other charge sheet with a direction to reply to the said charge sheet within 3 days. The resolution of the Standing Committee dtd.10.9.98 is at Annexure-A to the petition, wherein it is stated that in the matter of departmental enquiry against the petitioner a retired High Court Judge or a retired Dist. Court Judge and responsible officer from the Health Department of the State Government or a superior officer be appointed as an enquiry officer. It is also stated that the Municipal Commissioner should take immediate action regarding appointment of the enquiry officer and that the departmental enquiry shall be completed within maximum three months time and intimation of this to be placed on record of the Hon'ble High court latest by 21.9.1998.

#. Since the enquiry was not completed within the time prescribed the Standing Committee of the respondent Corporation considered the matter and in its meeting held on 31.7.99 passed a resolution which is at Annexure-B. In that it was resolved that as the petitioner is under suspension for more than 10 months, the enquiry officers are appointed for last more than 7 months and still as enquiry is not concluded it is deemed proper that the petitioner's case for reinstatement be considered. The said resolution mentioned that the allegations against the petitioner are mainly regarding his work in filaria/malaria department and hence the petitioner should not be given charge of this particular department filaria / malaria. It is resolved that the petitioner shall be reinstated on the post of Medical Officer of Health. The said resolution was passed subject to the approval of the General Board.

#. It is the case of the petitioner that the said resolution came to be approved by General Board of the respondent corporation held on 23.8.1999. Thereafter, the Standing Committee of the respondent corporation has passed a resolution dtd.23.9.99 whereby earlier resolution came to be suspended with a note that the departmental enquiry pending against the petitioner shall be completed within two months i.e. by 23.10.99.

#. It is the case of the petitioner that the petitioner made number of representations for complying with the resolution of the Standing Committee dtd.31.7.99 which according to the later resolution dtd.23.9.99, if the enquiry is not completed within two months, the petitioner shall be reinstated in service. Mr.Vyas, appearing for the petitioner has submitted that the

hierarchy of the authority under the Corporation Act is given in Sec.4. According to Mr.Vyas The Bombay Provincial Municipal Corporation Act (hereinafter referred as "act") provide in Sub Sec.1 of Sec.4 that on the top of the list of Municipal Authorities "Corporation" then "Standing Committee" and next to that Municipal Commissioner. He has also drawn the attention of the court to the provision of Sec.45 which deals with the appointment of City Engineer etc. Sub Sec.1 of Sec.45 provides that " The Corporation shall from time to time appoint fit persons to be City Engineer, Medical Officer of Health,(emphasis supplied) Municipal Chief Auditor and Municipal Secretary." Mr.Vyas has thus referred to Sec.56 which provides for imposition of penalty on municipal officers and servants. Sec.56 reads as under:-

"56. Imposition of penalties on municipal officers and servants.

(1) A competent authority may subject to the provisions of this Act impose any of the penalties specified in sub section (2) on a municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or that misconduct or is incompetent :

Provided that -

(a) no municipal officer or servant whose monthly salary, exclusive of allowances, (exceeds such amount as may be fixed in this behalf, by a general or special order, by the State Government in the case of each Corporation) shall be dismissed by the Commissioner without the previous approval of the Standing Committee;

(b) any officer appointed by the Corporation excepting the Transport Manager may be suspended by the Standing Committee pending an order of the Corporation, such suspension and the reason therefore being forthwith reported to the Corporation;

#. The main contention of Mr.Vyas the learned counsel is that once the Standing Committee who in hierarchy of the Municipal Authorities is higher than the commissioner has passed a resolution to revoke the suspension and to reinstate the petitioner and when the said resolution is approved by the General Board, the commissioner of respondent corporation has to comply with the said resolution and he cannot deny/avoid to comply with the said resolution. Mr.Vyas has also submitted that the

commissioner cannot override the decision of the Standing Committee and General Board. Mr. Vyas submits that once the power of suspension is exercised by the Standing Committee and once the power of revocation of the suspension is also exercised by the Standing Committee, the Commissioner has no other alternative then to implement the said resolution. Mr.Vyas submits that in view of the Scheme of the Act i.e. taking into consideration the Municipal Authorities set out in Sec.4, the provision of Sec.45 and 56, the commissioner is acting malafide. For substantiating his argument of malafide which are in detail in the earlier petition i.e. set out 7525/98. Mr.Vyas wanted to reiterate the same. but then as the scope of this particular petition is limited i.e. only to the extent that the resolution passed by the Standing Committee, approved by the General Board, shall be complied by the Commissioner those submissions are not required to be gone into. On the other hand, Mr.S.N. Shelat, the learned advocate appearing with Mr.P.G.Desai, has invited the attention of court to an affidavit filed by the present commissioner wherein he has stated in paras 4,5,6,7 and more particularly in para 9 and 13 the circumstances to justify the action. Mr.Shelat the learned counsel has also pointed out that alongwith the petitioner there are about 19 other employees who are under suspension and their suspension continues till date. Mr.Shelat submitted that in fact when the suspension order is subject matter of a pending Spl. .C.A. before this court, there is no question of granting any relief to the petitioner in this petition. Mr.shelat invited the attention of the court to the provision of Sec.67 which provides for function of several municipal authorities. Sec.67 reads as under :-

"67 Function of the several municipal authorities.

(1) The respective functions of the several municipal authorities shall be such as are specifically prescribed by or under this Act.

(2) Except as otherwise expressly provided in this Act, the municipal Government of the City vests in the Corporation.

(3) Subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or the Standing Committee and subject also to all other restrictions, limitations and conditions imposed by this Act or by any other law for the time being in force, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act

for the time being in force which imposes any duty or confers any power on the Corporation vests in the Commissioner, who shall also-

(a) perform all the duties and exercise all the powers specifically imposed or conferred upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over, the acts and proceedings of all municipal officers and servants, other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and servants immediately subordinate to them, and subject to the regulations, dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances

##. Mr.Shelat, the learned counsel submitted that the present resolution is passed by the Standing Committee to revoke the suspension because the period set out to complete the enquiry was not extended. Otherwise once the Standing Committee had come to the conclusion that the petitioner is required to be suspended during the pendency of the enquiry there was no reason for revoking the suspension of the petitioner when the enquiry is almost at the verge of completion as mentioned in para 13 of the affidavit-in-reply.

##. Mr.Shelat the learned counsel submitted that the concept of suspension is well known and the suspension can also be by way of punishment also, while in the present case it is only a suspension during the pendency of departmental enquiry. Mr.Shelat the learned counsel relied upon a judgment reported in AIR 1961 Allahbad Page 580 between L. C. Agarwal, Vs. Municipal Board, Hapur. Mr.Shelat pressed para 4 at page 580 into service which reads as under :-

"Now it is desirable at the outset to be clear as to the precise nature of the suspension which it is claimed that the State Government has the power to impose. Suspension in ordinarily of two kinds, namely suspension as a punishment and suspension pending enquiry. We are concerned here only with the suspension pending enquiry. that suspension may however also be of two kinds, for a distinction must be drawn between suspending an employee from service and suspending him from performing the duties of his post or office. If there is a contract of service in the strict sense, the first kind of

suspension involves the suspension of the contract, while the second involves only a suspension of the employee from the performance of his duties on the basis that the contract is subsisting, (see the judgment of Ramaswami, J, in Gurudeva Narayan Srivastava v. State of Bihar, (S) AIR 1955 Pat 131 at p.134."

##. It is the case of Mr.Shelat the learned counsel that in the present case, the petitioner if reinstated in service and thereafter allowed to discharge his duty it is going to effect the smooth running of the administration for which the commissioner is sole responsible officer as provided under Sec.67. In light of that Mr.Shleat submitted that even if the petitioner is to be reinstated in service pursuant to the resolution of the Standing Committee, as approved by the General Board, the petitioner shall not insist for assigning of the duty and that the commissioner shall be allowed to see that the petitioner continues under suspension from discharge of his duty. Mr.Shelat in this regard relied upon a decision of the Hon'ble the Supreme Court reported in AIR 1984 Supreme Court 626, wherein the Hon'ble Supreme court was dealing with the provision of City of Nagpur Corporation Act. The provision of Sec.59 (3)(b) are almost identical to the provision of Sec.67 (3)(b). The Hon'ble the Supreme Court has observed in para 3 of the said judgment, as under ;

"Thus clause (b) of s. 59(3) in express terms authorises and clothes the Municipal Commissioner with the power to exercise supervision and control over the acts of Municipal officers and servants. It may be noticed that the said clause (b) is preceded by the words 'vest in the Commissioner'. When the words 'control' and 'vests' are read together they are strong terms which convey an absolute control in the authority in order to effectuate the policy underlying the rules and makes the authority concerned the sole custodian of the control of the servants and officers of the Municipal Corporation. In the case of State of West Bengal v. Nripendra Nath Bagchi(1) while interpreting a similar language employed in Art. 235 of the Constitution of India which confers control by the High Court over District courts, this Court held that the word 'control' would include the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations:

"The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge,"

... ...

"In our Judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal."

This view was reiterated in High Court of Andhra Pradesh & Ors. v. V.V.S. Krishnamurhty & Ors.(2) where this Court clearly held that 'control' included the passing of an order of suspension and that the power of control was comprehensive and effective in operation. In this connection, Sarkaria, J. speaking for the Court, observed as follows (at p.201 of AIR) :-

"The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystalized by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a) (i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal.....

(ii) In Article 235, the word 'control' is

accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court, being exclusive, and not dual, an inquiry into the conduct of a member of judiciary can be held by the High Court alone and no other authority.....

(iii) Suspension from service of a member of the judiciary, with a view to hold a disciplinary inquiry."

4. It is thus now settled by this Court that the term 'control' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word 'control'. On a parity of reasoning, therefore, the plain language of clause (b) of s. 59 (3), as extracted above, irresistibly leads to the conclusion that the Municipal Commissioner was fully competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. The High Court was, therefore, in error in holding that the order of suspension passed by the Municipal Commissioner was without jurisdiction. In this view of the matter the order of the High Court cannot be maintained and has to be quashed."

##. Mr.Shelat submitted that the departmental enquiry which is pending against the petitioner is likely to be over within four months and not later than six months because the enquiry has already reached to a stage of argument, looking to the allegations of financial irregularities in purchase of medicine and more particularly regarding the discharge of duty of the petitioner filaria / malaria Department, the petitioner shall not be reinstated in service and in case the reinstatement in service is granted, the commissioner shall be allowed to continue the petitioner "under suspension from discharge of duty."

##. Mr.Vyas the learned counsel has submitted that in light of provisions of Sec.45, 56, Sec.67 will not have any application to the facts of this case and that the

decision of Hon'ble the Supreme Court (Supra) will also not apply, because the Hon'ble the Supreme Court was not required to take into consideration the provisions of Sec.45 and 56 if the Act. Mr.Vyas also submitted that so far as the "suspension from discharge of duty" is concerned the same is taken care of by the Standing Committee while passing the resolution revoking the suspension, when the Standing Committee specifically mentioned that the major allegations against the petitioner are about his work in the filaria / malaria Department and hence on his reinstatement he should not be given charge of that particular Department filaria / malaria.

##. Looking to the facts and circumstances of the case and looking to the submission of both the sides the petitioner cannot insist for reinstatement with further insistence for the allotment of duty. It is clear from the Scheme of the Act under Sec.67 that Municipal Commissioner is responsible for the smooth running of the administration and hence it is his prerogative to prescribe/allot the duty and exercise supervision and control over the acts and proceedings of municipal officer and servant.

##. In the result the petition partly succeeds. The petitioner is to be reinstated in service pursuant to the resolution at AnnexureB, C and D. However, it will be open to the Commissioner to assign or not to assign the petitioner any duty in light of the alleged irregularity for which the department proceedings are already going on. However, it is directed that the commissioner of respondent corporation shall finish enquiry preferably within four months but not later than six months. Rule is made absolute in the aforesaid terms with no order as to costs.

kks